

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS PAUL AUBINEAU,

No. C-14-5061 EMC (pr)

Petitioner,

v.

ORDER OF DISMISSAL

E. VALENZUELA, Warden,

Respondent.

Petitioner, currently incarcerated at the California Men's Colony in San Luis Obispo, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge his 1997 conviction from the Santa Clara County Superior Court. The petition is not his first federal habeas petition concerning his 1997 conviction. His earlier habeas petition in *Aubineau v. Duncan*, No. C 00-20364 JF, was denied on March 5, 2003, and no appeal was taken.

A second or successive petition may not be filed in this court unless the petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. 28 U.S.C. § 2244(b)(3)(A).

Petitioner has not obtained an order from the Ninth Circuit permitting the filing of a second or successive petition. This Court will not entertain a new petition from Petitioner until he first obtains permission from the Ninth Circuit to file such a petition. This action is **DISMISSED** without prejudice to Petitioner filing a petition in this court after he obtains the necessary order from the Ninth Circuit.

If Petitioner wants to attempt to obtain the necessary order from the Ninth Circuit, he should file an "Application For Leave To File Second Or Successive Petition" in the Ninth Circuit (at 95


1 Seventh Street, San Francisco, CA 94103). A copy of the form application is enclosed with this
2 order for his convenience.

3 Petitioner's motion for appointment of counsel is DENIED. Docket # 2. The Court will not
4 appoint counsel in a case that must be dismissed.

5 The Clerk shall close the file.

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7 IT IS SO ORDERED.

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9 Dated: November 24, 2014

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12 EDWARD M. CHEN
13 United States District Judge
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